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A REVIEW OF CONTRACT NEGOTIATION AND ADMINISTRATION

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Highlights

In the Manual

UAW Members Approve Rouge Steel Contract, Paving Way for Takeover by Russian Company

Members of the United Auto Workers Jan. 28 approved a three-year contract for workers at Rouge Industries Inc. in Dearborn, Mich., completing the final step needed for OAO Severstal to take over the bankrupt steel company. Severstal, a Russian company, said that its asset purchase agreement for the facility was subject to ratification of the contract.

Principle factors drawing member support were promises of job security and the company's commitment to continue paying for retiree health care premiums, UAW told BNA.

About 700 of the approximately 2,000 employees that UAW represents at the facility are eligible for jobs at Ford Motor Co. if they are laid off from the steel plant. Ford agreed to the provision allowing workers to return when it sold the Dearborn facility to Rouge Steel in 1989. Layoffs among the 700 employees should sufficiently alleviate economic pressure on Severstal so that the other 1,300 union-represented workers can keep their jobs, the union said.

Under the contract with Severstal, workers will not receive a wage increase in 2004 but will receive 2 percent wage increases in 2005 and 2006. Hourly pay in the plant ranges between approximately $14 and $19, and averages $18. The union also agreed to reduce incentive pay and to give up paid time off between Christmas and New Year's.

The agreement maintains company-paid health insurance but reduces the number of plans available from eight to two, and replaces a defined benefit pension plan with a defined contribution plan to which the company contributes between 25 cents and $2.50 per hour based on age and seniority.

Union Leaders Agree to Lower Pay Scale For US Airways Pilots at New Regional Carrier

Leaders of the Air Line Pilots Association at US Airways Feb. 9 agreed to a wage and benefits package for pilots who will fly jets for a planned regional airline that the carrier intends to start up in April, the union said Feb. 11. The agreement does not need to be ratified by rank-and-file pilots.

Under the agreement, pilots for the regional MidAtlantic Airways will be paid the same rate as pilots flying 70-seater planes for American Eagle, the commuter carrier for American Airlines, according to ALPA. Although that rate—between $52 per hour and $59 per hour—is substantially less than the $100 to $200 per hour that pilots on mainline US Airways jets earn, the regional service pilots will be eligible immediately to receive health insurance benefits and to participate in a 401(k) plan that will include matching company contributions. MidAtlantic first officers will earn $35 to $40 per hour.

Positions for MidAtlantic pilots will be offered first to the nearly 2,000 pilots who have been furloughed by US Airways, ALPA said. In anticipation of the new regional carrier starting operations in the spring, about 85 pilots now are in training or already have completed training.

US Airways said it has 85 Embraer-170 jets on order. The aircraft are awaiting final certification from the Federal Aviation Administration, although US

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Airways expects to have MidAtlantic operating by early April with flights based from a hub in Pittsburgh.

New England Grocery Workers Retain Company-Paid Benefits

Stop & Shop grocery stores in southern New England will continue to pay the cost of worker health care under five three-year contracts ratified Feb. 15 by members of the United Food and Commercial Workers. The agreements cover about 42,000 workers at 220 stores.

The union said agreement was reached after management withdrew a proposal for employees to begin paying 20 percent of health care premium costs. Noting that worker health care payments are a major issue in the continuing strike and lockout affecting grocery chains in Southern California, UFCW said, ''We dodged a bullet.''

Stop & Shop agreed to increase its health-welfare contributions from $475 a month for full-time employees and $120 for part-timers to $525 and $130 next month, $567 and $140 in March 2005, and $612 and $150 in March 2006.

There were health care variations in each contract. For example, one local agreed that part-time workers would not become eligible for health coverage until two years of service, up from one year, and another local agreed to increased deductibles and prescription drug co-pays.

All the agreements call for wage increases of $25 per week in each year for full-time employees and 30 cents per hour in the first year and 25 cents per hour in the second and third years for part-time employees, who make up the majority of the bargaining units. Current pay ranges from $15 to $25 per hour for full-time workers and averages $8.50 per hour for part-timers, UFCW said.

Cooperative Relationship Cited As CWA, SBC Open Bargaining

In an effort to set a constructive tone in talks kicking off this month to renegotiate contracts for about 102,000 workers in four regions, SBC Communications Inc. and the Communications Workers of America Feb. 4 announced an agreement that will guide each side's actions should a strike become imminent.

CWA agreed to give SBC 30 days' notice before taking any strike action if a settlement is not reached by the contracts' expiration in early April. In turn, SBC agreed it would continue providing health care benefits to workers in the event there is a strike.

''This agreement is a demonstration of the durability of our longstanding cooperative relationship with the CWA,'' SBC said in a joint statement. The union concurred, stating that ''over the years, we have built a positive relationship based on mutual respect and the understanding of each other's needs. We hope to continue that process and to achieve a timely settlement that is fair all the way around.''

The contract covering about 32,000 SBC West employees will expire April 1, and contracts covering 27,000 SBC Midwest, 37,000 SBC Southwest, and 6,000 SBC East employees will expire April 3.

While negotiating teams in each region bargain separately, CWA has outlined goals for each of the four contracts: increasing wages; maintaining job security and comprehensive health care coverage; protecting retiree health care benefits; funding and improving pensions for both active and retired members; and easing customer service quotas, monitoring, and overtime.

SBC declined to discuss specific bargaining goals, but said health care will be an issue.

Court Orders Arbitration Of Outsourcing Work Dispute

The U.S. Court of Appeals for the Third Circuit Feb. 3 ordered a dispute over the outsourcing of aircraft maintenance to be settled through binding arbitration (*International Ass'n of Machinists v. US Airways Inc.*, 174 LRRM 2161, 3d Cir., No. 03-4169, 2/3/04).

The appeals court found that a district court erred by granting a preliminary injunction that blocked the airline from performing scheduled maintenance on Airbus aircraft at a facility where work was done by mechanics not covered by the parties' bargaining agreement. The union had argued that the outsourcing dispute was a ''major dispute'' under the Railway Labor Act, and, therefore, the court could stop the work.

The lower court erred in finding that the dispute was a major dispute under RLA, the Third Circuit said. Rather, it is a ''minor dispute'' stemming from disagreement over interpretations of the agreement between the parties on whether some types of maintenance could be contracted out.

The dispute ''is a minor one because both parties have asserted rights existing under the collective bargaining agreement, the dispute turns on the proper interpretation or application of the collective bargaining agreement, and [the airline's] argument is neither frivolous nor obviously insubstantial,'' the court said.

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Facts & Figures

Frequency of Lump-Sum Payment Provisions Declined in 2003

Data compiled by BNA in 2003 showed lump-sum payment provisions were contained in 12 percent of all nonconstruction contracts, compared with 13 percent in 2002 and 11 percent in 2001, and below the high level of 36 percent reported in 1988.

The analysis is based on a database of 682 collective bargaining agreements covering more than 1,325,000 workers and reported in CBNC's Table of Contract Settlements (tab 19). Construction contracts were excluded because none contained lump-sum pay provisions. Further, holiday, vacation, and other such bonuses were not included in the analysis.

Average and Median Increases

The average first-year wage increase in all nonconstruction settlements reported in 2003 was 3.5 percent, and the median and weighted average increases each were 3 percent. In settlements with lump-sum payments, the average increase was 3.4 percent, the median was 2.5 percent, and the weighted average was 4.7 percent. Agreements without lump sums provided an average first-year increase of 3.2 percent, a median increase of 3 percent, and a weighted average of 1.5 percent.

Deferred average wage adjustments in all nonconstruction contracts reported in 2003 were 3.1 percent in the second and third years. Average increases in contracts with lump sums were 2.1 percent in the second year and 2 percent in the third year. Agreements without lump sums showed a deferred average increase of 3 percent in the second and third years.

Deferred median increases were 3 percent in the second and third years for all nonconstruction contracts, 2 percent in the second year and 1 percent in the third year for settlements with lump sums, and 3 percent in the second and third years for agreements without lump sums.

Lump-sum pay provisions were found in 29 percent of manufacturing contracts reported in 2003, up from 26 percent in 2002 and 19 percent in 2001. Lump sums were included in 11 percent of nonmanufacturing (excluding construction and state and local government) contracts bargained in 2003, the same percentage reported in 2002 and up slightly from 9 percent in 2001. One percent of state and local government contracts reported in 2003 contained lump-sum provisions, compared with 5 percent in 2002 and 3 percent 2001.

Flat-Dollar Bonuses Prevail

The most common form of bonus was a flat dollar amount, appearing in 82 percent of contracts with lump sums. Of these, all provided a bonus in the first year, 15 percent provided a bonus in the second year, and 3 percent provided a bonus in the third year. The 2003 flat-sum average was $1,380 in the first year (compared with $869 in 2002 and $1,107 in 2001); $760 in the second year (compared with $861 in 2002 and $794 in 2001); and $2,300 in the third year

FREQUENCY OF 2001-2003 LUMP-SUM PAYMENT PROVISIONS

	Number of Contracts [1]			Percentage of Contracts			Number of Workers [2] (in thousands)			Percentage of Workers		
	2003	2002	2001	2003	2002	2001	2003	2002	2001	2003	2002	2001
All industries excluding construction	682	615	714	100	100	100	1,325	1,615	1,060	100	100	100
With lump-sum bonus	79	81	79	12	13	11	514	655	187	39	41	18
Without lump-sum bonus	603	534	635	88	87	89	811	960	873	61	59	82
Manufacturing	143	140	224	100	100	100	457	133	191	100	100	100
With lump-sum bonus	42	37	43	29	26	19	348	70	53	76	53	28
Without lump-sum bonus	101	103	181	71	74	81	109	63	138	24	47	72
Nonmanufacturing excluding construction and government	318	319	345	100	100	100	868	1,482	869	100	100	100
With lump-sum bonus	34	36	32	11	11	9	166	585	134	19	39	15
Without lump-sum bonus	284	283	313	89	89	91	702	897	735	81	61	85
State and local government	221	156	145	100	100	100	227	306	269	100	100	100
With lump-sum bonus	3	8	4	1	5	3	3	6	43	1	2	16
Without lump-sum bonus	218	148	141	99	95	97	224	300	226	99	98	84

[1] Excludes contracts that were reopened in the given year.

[2] In some cases the number of workers is unknown.

[*Note:* Because of rounding, totals may not equal sums of figures.]

(compared with $1,042 in 2002 and $1,118 in 2001).

The second most popular bonus system based payments on a percentage of the previous year's pay, and was found in 16 agreements, or 20 percent of contracts calling for lump sums. Of these, eight contracts called for a bonus in the first year, 12 agreements provided a bonus in the second year, and 3 contracts called for a bonus in third year. The average first-year lump-sum amount negotiated in 2003 was 3.6 percent (the same as that reported in 2002 and up from 3 percent in 2001). The average second-year lump-sum payment was 2.8 percent, and the third-year lump sum was 2.6 percent.

An industry breakdown showed that 28 percent of all 2003 nonconstruction lump-sum agreements were in transportation equipment. Services contracts accounted for 13 percent of lump-sum provisions, subway-buses-taxis contracts for 11 percent, durable goods contracts for 9 percent, and communications contracts for 8 percent.

No lump-sum pay provisions were found in several industries, including electrical machinery, maritime, and textiles.

Geographical Breakdown

A geographical breakdown showed that of all 2003 nonconstruction lump-sum provisions, 19 percent were contained in contract reports from the mid-Atlantic states and 16 percent were in reports from the Western region. Multistate and Southeastern contracts each accounted for 15 percent of 2003 lump-sum provisions, North Central contracts for 13 percent, Southwestern contracts for 8 percent, New England agreements for 6 percent, Midwestern agreements for 5 percent, and Rocky Mountain contracts for 3 percent.

Analysis by union showed that 77 percent of reported agreements negotiated in 2003 by the United Auto Workers contained at least one lump-sum payment. One-time payments were called for in 73 percent of multiunion contracts; 29 percent of Communications Workers of America contracts; 27 percent of International Brotherhood of Electrical Workers contracts; 25 percent of United Food and Commercial Workers contracts; 24 percent of United Electrical, Radio and Machine Workers of America agreements; 22 percent of International Association of Machinists contracts; and 10 percent of Amalgamated Transit Union contracts.

No lump-sum payment provisions were found in reported agreements negotiated by several unions, including the International Union of Operating Engineers, National Education Association, Transport Workers Union, Transportation Communications Union, and United Transportation Union.

WEIGHTED AVERAGE, AVERAGE, AND MEDIAN WAGE INCREASES FOR 2003 CONTRACTS

	First Year			Second Year			Third Year		
	Wgt. Avg.	Average	Median	Wgt. Avg.	Average	Median	Wgt. Avg.	Average	Median
All industries excluding construction	3.0%	3.5%	3.0%	2.4%	3.1%	3.0%	2.6%	3.1%	3.0%
Contracts with lump-sum bonus	4.7%	3.4%	2.5%	2.9%	2.1%	2.0%	1.3%	2.0%	1.0%
Contracts without lump-sum bonus ...	1.5%	3.2%	3.0%	1.7%	3.0%	3.0%	2.6%	3.0%	3.0%
Manufacturing	4.8%	3.2%	2.8%	2.9%	2.6%	2.6%	2.1%	2.6%	2.8%
Contracts with lump-sum bonus	5.4%	4.0%	2.7%	3.0%	3.0%	3.0%	4.4%	3.9%	3.4%
Contracts without lump-sum bonus ...	0.8%	2.1%	2.5%	0.8%	2.4%	2.5%	2.1%	2.5%	2.8%
Nonmanufacturing excluding construction and government	2.2%	4.0%	3.3%	2.1%	3.4%	3.0%	2.9%	3.2%	3.0%
Contracts with lump-sum bonus	3.0%	2.7%	1.3%	1.8%	1.2%	1.5%	0.0%	0.0%	0.0%
Contracts without lump-sum bonus ...	1.8%	3.8%	3.2%	2.0%	3.3%	3.0%	2.9%	3.2%	3.0%
State and local government	2.2%	2.9%	3.0%	2.7%	3.0%	3.0%	3.5%	3.3%	3.5%
Contracts with lump-sum bonus	0.0%	1.5%	1.5%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Contracts without lump-sum bonus ...	2.2%	2.9%	3.0%	2.7%	3.0%	3.0%	3.5%	3.3%	3.5%

[*Note:* Weighted averages, averages, and medians are based on 79 contracts with lump-sum bonuses and 603 contracts without lump-sum bonuses. Figures do not include contracts where amount of increase is not specified.]

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interpretation of NLRA and entitled to deference.

NLRB also has the opportunity to re-examine its decision in *M.B. Sturgis Inc.*, 331 N.L.R.B. 1298, 165 LRRM 1017 (2000), which allows temporary workers jointly employed by a temporary agency and a user company to be in the same bargaining unit with workers employed solely by the company, without obtaining the consent of both employers.

Another precedent that may be revisited is *Levitz Furniture Co. of the Pacific*, 333 N.L.R.B. 717, 166 LRRM 1329 (2001), which addressed the standard for an employer to file a decertification petition and the types of evidence an employer can rely on to show the union no longer has the support of a majority of employees.

The second biggest group of pending cases, after supervisory cases, involves employer refusals to consider or hire union organizers known as ''salts.'' Salting is an organizing strategy, frequently used in the construction industry, in which paid union members seek employment with nonunion employers with the intention of organizing from within. In *FES (a Division of Thermo Power)*, 331 N.L.R.B. 9, 164 LRRM 1065 (2000), the board provided a framework for analyzing claims that an employer refused to consider or refused to hire an applicant because of his or her union activity. There are 56 salting cases pending before the board.

Other significant issues that may be addressed in 2004 include employer restrictions on employee use of the company e-mail system and computers, jurisdiction over commercial enterprises on Indian reservations, pro-union conduct by supervisors before a representation election, disputes arising from neutrality/card-check agreements, and employer property rights.

Board Rulings Under Review

Several important or controversial board rulings currently are under review by the federal appeals courts.

The Minnesota Licensed Practical Nurses Association, which represents LPNs and medical assistants at Alexandria Clinic P.A. in Alexandria, Minn., appealed to the Eighth Circuit the board's August 2003 decision that nurses who began a strike four hours after the time designated in their notice to the clinic were legally discharged for failing to comply with notice requirements regarding health care institutions (*Alexandria Clinic P.A.*, 339 N.L.R.B. No. 162, 173 LRRM 1065).

The Greenbrier resort in West Virginia appealed to the Fourth Circuit the board's September 2003 decision that the resort committed an unfair labor practice by calling the police to remove from public property several union representatives who were engaged in lawful picketing against a contractor (*CSX Hotels Inc., d/b/a Greenbrier*, 340 N.L.R.B. No. 92, 173 LRRM 1273).

Wal-Mart Stores Inc. appealed to the Eighth Circuit the board's September 2003 decision that an employee did not violate the company's no-solicitation policy either by wearing a T-shirt that referred to the International Brotherhood of Teamsters and said ''Sign a card . . . Ask me how'' or by asking three co-workers to attend a union meeting (*Wal-Mart Stores Inc.*, 340 N.L.R.B. No. 76, 173 LRRM 1249).

Currently pending in the Ninth Circuit is an appeal of an October 2002 federal district court ruling that portions of a new California law that prohibit employers that receive state funds from using those funds to assist or deter unionization efforts by their employees are preempted by NLRA (*Chamber of Commerce of the U.S. v. Lockyer*, 225 F. Supp. 2d 1199, 170 LRRM 3185 (C.D. Cal. 2002)). The board voted in June 2003 to authorize the NLRB general counsel to file an amicus brief with the Ninth Circuit supporting the district court decision. The appeals court heard oral argument in the case in September 2003 and has not yet issued a decision.

The board's success rate in the federal appeals courts, which review board decisions, rose during fiscal year 2003 compared with the previous year. In FY 2003, the board won in whole or in part in 87 percent of cases involving the board and won 76 percent of the cases in whole. During the previous fiscal year, the board won 71 percent of cases in whole or in part and 60 percent in whole.

The FY 2003 success rates are ''the highest in 10 years,'' Battista said. Appeals court decisions often come one or two years after the board decision was issued.

The board has responded to criticism by some appeals court judges by making more of an effort to present a thorough analysis and reasoning in its decisions, Walsh said. In many cases, the board votes unanimously to adopt the administrative law judge's findings and adds only a short statement of its decision.

Appeals courts sometimes are unhappy with such short decisions, but if NLRB wrote a full decision in every case, it would take longer to issue decisions and the inventory of pending cases would likely grow. The board handles a lot of cases and cannot predict which of them will be appealed.

Rulemaking on E-Mail Policies?

For the first time since 1989, when the board adopted a rule regarding hospital bargaining units, NLRB again is considering rulemaking activity. The subject is what restrictions employers legally may place on employee use of the employer's e-mail system and computers for organizing or mutual aid or protection.

Recognizing that rulemaking is an extremely time-consuming and contentious process, Battista said he proposed to union and management representatives in January 2003 that they negotiate rules both sides can live with and then submit them for the board's consideration. Battista said he got ''a positive response,'' but so far the progress has been slow.

''I would really like to see this,'' Liebman said, explaining that she had a positive experience with negotiated rulemaking while serving as deputy director of the Federal Mediation and Conciliation Service from 1995 to 1997. Employer e-mail policies have ''lots of implications'' and present a ''fertile'' area for rulemaking, Liebman said. Negotiated rulemaking has the advantage of the participants ''buying into'' the result after participating in a process in which they figure out what they need and what they can live with.

Also pending are two petitions that the board issue rules requiring employers to post workplace notices. The first petition, filed in 1993 by retired Southern Methodist University law Professor Charles J. Morris, seeks a rule requiring a notice that explains employees' rights guaranteed by Section 7 of NLRA. The second notice, requested by former California Gov. Pete Wilson (R) in 1998, would explain the rights of employees covered by a bargaining agreement containing a union security clause not to join the union and to pay only their pro-rata share of union expenditures related to collective bargaining, contract administration, and grievance adjustment.

Special Report

Significant Cases Await Action as NLRB Regains Full Strength

The National Labor Relations Board could be poised for a very productive year, with all five seats filled, only one new member learning the ropes, and many significant cases awaiting decision.

With the Jan. 12 swearing-in of Member Ronald E. Meisburg, the board returned to full strength for the first time since late August 2003. Meisburg joins Chairman Robert J. Battista and Members Wilma B. Liebman, Peter C. Schaumber, and Dennis P. Walsh.

In a Jan. 13 interview with the five board members, Battista said he hopes to continue the board's tradition of collegiality. His motto is: ''when we disagree, try not to be disagreeable about it.'' Battista also pledged to continue to build credibility with unions, employers, employees, and the courts by deciding cases in a timely fashion and issuing well-reasoned decisions.

Challenges Outlined

The board's biggest challenges, Liebman said, continue to be issuing timely decisions, adapting the nearly 70-year-old National Labor Relations Act to changing workplace conditions, and agreeing on a philosophical approach to determining when precedent should be changed.

Walsh said another challenge is to make sure the board's procedures in representation cases remain relevant and are desirable to use. He expressed concern that the board is granting too many requests for review of regional directors' decisions in representation cases, thereby delaying workers who have voted from learning whether or not they have union representation.

An increasing phenomenon is unions seeking neutrality agreements to avoid using board representation processes they view as ineffective, Liebman added.

The issue most frequently raised in pending board cases is supervisory status. There are 57 cases involving supervisory status awaiting decision by the board. Employees who meet NLRA's definition of a supervisor may not vote in a representation election or be part of a bargaining unit.

The U.S. Supreme Court in its May 2001 decision in *NLRB v. Kentucky River Cmty. Care Inc.*, 532 U.S. 706, 167 LRRM 2164 (2001), rejected the board's previously used test for deciding whether a worker exercises independent judgment, one part of the act's definition of a supervisor.

Briefs on Supervisory Status

In July 2003, the board invited interested parties to file amicus briefs analyzing the impact of *Kentucky River* on three pending cases involving supervisory status of certain employees. The three board cases are *Oakwood Healthcare Inc.*, No. 7-RC-22141; *Golden Crest Healthcare Center*, No. 18-RC-16415; and *Croft Metals Inc.*, No. 15-RC-8393. Decisions in these three ''lead cases'' will enable the board to quickly decide other cases involving similar situations.

Another issue on which the board solicited public views is the legality of job-targeting programs run by many construction unions. In these programs, unions provide subsidies to contractors that have union bargaining agreements to help them compete for construction projects with non-union contractors. The contractor pays its union workers rates required by the bargaining agreement, and the union reimburses the contractor for the difference between the actual wages paid and the lower rates the contractor cited in its bid.

There are two cases pending before the board involving job-targeting programs. In December 2003, the board invited interested parties to file amicus briefs in pending cases—*Can-Am Plumbing Inc.*, No. 32-CA-16097, and *J.A. Croson*, No. 9-CA-35163-1. Amicus briefs were due Jan. 20, and the parties in the two cases had to respond to the amicus briefs by Feb. 3.

Another issue on which the board asked for amicus briefs involves successor employers. The board in May 2002 invited interested parties to give their views on whether a successor employer that illegally refused to hire the predecessor's employees in an effort to avoid the obligation to recognize and bargain with their union should be allowed to unilaterally set initial terms and conditions of employment.

The pending case is *Francisco Foods Inc. d/b/a Piggly Wiggly*, No. 30-CA-14738. In it, the board will decide whether to overrule its 1979 decision in *Love's Barbeque Restaurant No. 62*, 245 N.L.R.B. 78, 102 LRRM 1546, which held that a successor employer that illegally refused to hire any of its predecessor's employees should not be permitted to benefit from its unlawful conduct by unilaterally reducing the pay and benefits called for in the predecessor's bargaining contract with a union.

Other Issues Awaiting Decision

Two cases pending before the board raise the issue of whether graduate student teaching assistants at Brown University and Columbia University are employees covered by NLRA or students not covered by the act. In *New York University*, 332 N.L.R.B. 1205, 165 LRRM 1241, decided in October 2000, the board held that graduate teaching assistants are employees entitled to vote on whether to choose union representation. Now that the board majority has switched from Democratic to Republican, it is possible that the board will overrule *New York University*.

Several other pending cases provide the board with the opportunity to revisit issues decided during the Clinton administration.

Previous decisions that are being re-examined include *Epilepsy Foundation of Northeast Ohio*, 331 N.L.R.B. 676, 164 LRRM 1233 (2000), which held that employees in non-union workplaces have the right to have a co-worker present when an employer conducts an interview that might lead to discipline. The U.S. Court of Appeals for the District of Columbia Circuit later upheld the board's *Epilepsy Foundation* decision, determining it was a reasonable

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